Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1977

No. 77-1353

OWENDALE-GAGETOWN SCHOOL DISTRICT,
Petitioner,

-v-

STATE BOARD OF EDUCATION,
Respondent,

KEITH GOSLIN, et al,
Respondents.

BRIEF OF RESPONDENT, STATE BOARD OF EDUCATION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

Respondent, State Board of Education, accepts petitioner's statement of the opinions below.

JURISDICTION

Respondent, State Board of Education, accepts petitioner's statement of jurisdiction.

QUESTION PRESENTED

Whether a decision by the Michigan Supreme Court, construing a Michigan statute dealing with transfers of property

between school districts as not requiring a vote of the people to effectuate the instant transfer, involves a federal question of substance which this Court should review?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1955 PA 269, § 461, MCLA 340.461; MSA 15.3461:[1]

> "An intermediate school board may detach territory from 1 school district and attach the territory to another if requested to do so by resolution of the board of a school district whose boundaries would be changed by the action, or if petitioned by not less than 2/3 of the persons who own and reside on the land to be transferred. The intermediate school board shall take final action within 60 days after the receipt of the resolution or petition. The territory shall be contiguous to the school district to which it is attached. If the latest assessed valuation of the area to be detached is more than 10% of the latest assessed valuation of the entire school district from which it is to be detached, the action of the intermediate school board shall not be effective unless approved by an affirmative vote of a majority of the school electors of the district from which the territory is to be detached."

STATEMENT OF THE CASE

Respondent, State Board of Education, accepts petitioner's

[1]

Subsequent to the granting of the property transfer here in question by the State Board of Education, 1955 PA 269, § 461, *supra*, was repealed and replaced by 1976 PA 451, § 951, MCLA 380.951; MSA 15.4951. There has been no change of substance in the more recent statutory provision.

statement of the case, at pp 5-7 of the petition for certiorari, with the following additional comments. The Michigan Supreme Court order of December 29, 1977, denying petitioner's motion for reconsideration, at pp A-1, A-2 of petitioner's appendix, provides:

> ". . . MCLA 340.461; MSA 15.3461 *provides for a vote of the school tax electors on a transfer only when* 'the latest available taxable valuation of the area to be detached is more than 10% of the latest available taxable valuation of the entire school district from which it is to be detached'. The record discloses that the latest available tax valuation of the area to be detached in this case is less than 10% of the Owendale-Gagetown School District as constituted at the time of the State Board of Education decision." (emphasis added)

Thus, it is manifest that, unlike the Michigan Court of Appeals, (See petitioner's appendix, A-7), the Michigan Supreme Court addressed petitioner's statutory claim under Michigan law and decided the claim adversely to petitioner. Petitioner is now attempting to assert alleged federal questions as a basis for obtaining review by this Court.

ARGUMENT

THE DECISION BY THE MICHIGAN SUPREME COURT, CONSTRUING A MICHIGAN STATUTE DEALING WITH TRANSFERS OF PROPERTY BETWEEN SCHOOL DISTRICTS AS NOT REQUIRING A VOTE OF THE PEOPLE TO EFFECTUATE THE INSTANT TRANSFER, DOES NOT INVOLVE A FEDERAL QUESTION OF SUBSTANCE WHICH THIS COURT SHOULD REVIEW.

A. Petitioner was allowed to raise its state statutory claim in the Michigan Supreme Court.

Petitioner attempts to convey the impression that it was denied standing by the Michigan appellate courts to raise its state statutory claim. That claim is that, pursuant to 1955 PA 269, § 461, *supra*, the instant transfer could not be effectuated without a vote of the people in the petitioner school district because, *based on a historical accumulation of prior transfers and the instant transfer,* over 10% of petitioner's state equalized valuation would have been transferred. The circuit court agreed with petitioner. See petitioner's appendix A-9.

On appeal, the Michigan Court of Appeals held that petitioner lacked standing to raise its state statutory claim, a holding with which this respondent respectfully disagrees. However, on reconsideration in the Michigan Supreme Court, that Court addressed petitioner's state statutory claim and decided it adversely to petitioner. Compare petitioner's appendix A-1 and A-7. Thus, clearly petitioner was granted standing by the Michigan Supreme Court to raise its statutory claim that was the basis of petitioner's lawsuit. See petitioner's brief at pp 5-6 and petitioner's appendix at A-6 and A-8, fn 2.

Since petitioner was granted standing by the Michigan Supreme Court to raise its state statutory claim, petitioner's first alleged reason for granting its petition is without substance. It is a straw man argument not rooted in the procedural and substantive history of this litigation. The statutory claim petitioner sought to raise from the inception of this litigation was considered and decided adversely by the Michigan Supreme Court.

B. The statutory requirement that only contiguous property may be transferred to another school district is clearly constitutional.

Petitioner claims that the requirement of 1955 PA 269, § 461, *supra*, that only contiguous property may be transferred to another school district, is violative of the Fourteenth Amendment. Petitioner lacks standing to raise this constitutional claim either on its own behalf or on behalf of some of its residents.[2] *Williams* v *Mayor and City Council of Baltimore,* 289 US 36 (1933); *Tileston* v *Ullman,* 318 US 44 (1943).

Education is not a right protected by the Federal Constitution. Thus, public school district boundary requirements, like public school financing laws, are subject to the rational basis test. *San Antonio Independent School District* v *Rodriguez,* 411 US 1, 35-40, 53-54 (1973). Clearly, the contiguity requirement for property transfers between school districts is rational since it serves to facilitate school district administration in matters of elections, taxation, transportation and com-

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[2]

It should be noted that a citizens group appeared in the case at the circuit court level, in opposition to the transfer, and then elected not to participate further in this litigation. See petitioner's appendix A-7, A-8, fn 4. Thus, the residents of the petitioner school district elected not to press their alleged constitutional rights herein.

munity esprit de corps. There is no constitutional right to non-contiguous municipalities or school districts.

C. School district boundary changes need not be made dependent upon a vote of the people.

Petitioner lacks standing to raise the constitutional claim, that the residents of the petitioner school district have a right to vote on the property transfer in question, either on its own behalf or on behalf of some of its residents. *Williams* v *Mayor and City Council of Baltimore, supra; Tileston* v *Ullman, supra.*

At page 13 of the petition for a writ of certiorari "[p]etitioner concedes that a state has no obligation to grant voting rights when it establishes procedures for determining the boundaries of local governments, including school districts. . . ." That statement is in accord with settled law and disposes of petitioner's third reason for granting the writ of certiorari. *Hunter* v *City of Pittsburgh,* 207 US 161, 178-179 (1907). There is simply no constitutional requirement that property transfers between school districts must be made subject to a popular vote.

The case relied upon by petitioner, *Kramer* v *Union Free School District No. 15,* 395 US 621, 629 (1969), only holds that once the franchise has been granted to the electorate as to a particular question, then the individual's right to vote may not be arbitrarily denied. *Kramer, supra,* does not require that any particular questions be submitted to the voters for decision. See also *Sailors* v *Kent Board of Education,* 387 US 105 (1967).

CONCLUSION AND RELIEF

Petitioner sought and obtained below a ruling on its state statutory claim. Petitioner has failed to raise any federal question of substance as contemplated by Supreme Court Rule 19 1. (a). Thus, for the foregoing reasons, the petition for a writ of certiorari should be denied by this Court.

Respectfully submitted,

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